

## § 502.119

## 46 CFR Ch. IV (10–1–98 Edition)

(1) An original and fifteen copies shall be filed with the Secretary of:

(i) Appeals and replies thereto filed pursuant to § 502.153;

(ii) Memoranda submitted under shortened procedures of subpart K of this part;

(iii) Briefs submitted pursuant to § 502.221;

(iv) All motions, replies and other filings for which a request is made of the administrative law judge for certification to the Commission or on which it otherwise appears it will be necessary for the Commission to rule either directly or upon review of the administrative law judge's disposition thereof, pursuant to § 502.227;

(v) Answers to complaints filed pursuant to § 502.64.

(2) An original and four copies shall be filed with the Secretary of prehearing statements required by § 502.95, stipulations under § 502.162, and all other motions, petitions, or other written communications seeking a ruling from the presiding administrative law judge.

(3)(i) A single copy shall be filed with the Secretary of requests for discovery, answers, or objections exchanged among the parties under procedures of subpart L of this part. Such materials will not be part of the record for decision unless admitted by the presiding officer or Commission.

(ii) Motions filed pursuant to § 502.201 are governed by the requirements of paragraph (b)(2) of this section and motions involving persons and documents located in a foreign country are governed by the requirements of paragraph (b)(1)(iv) of this section.

(4) One copy of each exhibit shall be furnished to the official reporter, to each of the parties present at the hearing and to the Presiding Officer unless he or she directs otherwise. If submitted other than at a hearing, the "reporter's" copy of an exhibit shall be furnished to the administrative law judge for later inclusion in the record if and when admitted.

(5) Copies of prepared testimony submitted pursuant to § 502.157 are governed by the requirements for exhibits

in paragraph (b)(4) of this section. [Rule 118.]

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 28400, July 11, 1990; 61 FR 66617, Dec. 18, 1996]

### **§ 502.119 Documents containing confidential materials.**

Except as otherwise provided in the rules of this part, all filings which contain information previously designated as confidential pursuant to §§ 502.167, 502.201(i)(1)(vii), or any other rules of this part or for which a request for protective order pursuant to § 502.201(i)(1)(vii) is pending, are subject to the following requirements:

(a) Filings shall be accompanied by a transmittal letter which identifies the filing as confidential and describes the nature and extent of the authority for requesting confidential treatment.

(b) Such filings shall consist of public and confidential copies. The public copies shall exclude confidential materials, shall indicate on the cover page and on each affected page "confidential materials excluded," and shall be filed in an original and one copy. The confidential copies shall consist of the complete filing and shall include a cover page marked "confidential-restricted," with the confidential materials likewise clearly marked on each page.

(c) Confidential treatment afforded by this section is subject to the proviso that any information designated as confidential may be used by the administrative law judge or the Commission if deemed necessary to a correct decision in the proceeding. [Rule 119.]

[55 FR 28400, July 11, 1990, as amended at 58 FR 27211, May 7, 1993]

## **Subpart I—Subpenas**

### **§ 502.131 Requests; issuance.**

Subpenas for the attendance of witnesses or the production of evidence shall be issued upon request of any party, without notice to any other party. Requests for subpenas for the attendance of witnesses may be made orally or in writing; requests for subpenas for the production of evidence shall be in writing. The party requesting the subpena shall tender to the presiding

officer an original and at least two copies of such subpoena. Where it appears to the presiding officer that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. [Rule 131.]

**§ 502.132 Motions to quash or modify.**

(a) Except when issued at a hearing, or in connection with the taking of a deposition, within ten (10) days after service of a subpoena for attendance of a witness or a subpoena for production of evidence, but in any event at or before the time specified in the subpoena for compliance therewith, the person to whom the subpoena is directed may, by motion with notice to the party requesting the subpoena, petition the presiding officer to quash or modify the subpoena.

(b) If served at the hearing, the person to whom the subpoena is directed may, by oral application at the hearing, within a reasonable time fixed by the presiding officer, petition the presiding officer to revoke or modify the subpoena.

(c) If served in connection with the taking of a deposition pursuant to § 502.203 unless otherwise agreed to by all parties or otherwise ordered by the presiding officer, the party who has requested the subpoena shall arrange that it be served at least twenty (20) days prior to the date specified in the subpoena for compliance therewith, the person to whom the subpoena is directed may move to quash or modify the subpoena within ten (10) days after service of the subpoena, and a reply to such motion shall be served within five (5) days thereafter. [Rule 132.]

**§ 502.133 Attendance and mileage fees.**

Witnesses summoned by subpoena to a hearing are entitled to the same fees and mileage that are paid to witnesses in courts of the United States. Fees and mileage shall be paid, upon request, by the party at whose instance the witness appears. [Rule 133.]

**§ 502.134 Service of subpoenas.**

If service of a subpoena is made by a United States marshal, or his or her deputy, or an employee of the Commission, such service shall be evidenced by his or her return thereon. If made by any other person, such person shall make affidavit thereto, describing the manner in which service is made, and return such affidavit on or with the original subpoena. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service, the original subpoena shall be exhibited to the person served, shall be read to him or her if he or she is unable to read, and a copy thereof shall be left with him or her. The original subpoena, bearing or accompanied by required return, affidavit, or statement, shall be returned without delay to the Commission, or if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear. [Rule 134.]

**§ 502.135 Subpoena of Commission staff personnel, documents or things.**

(a) A subpoena for the attendance of Commission staff personnel or for the production of documentary materials in the possession of the Commission shall be served upon the Secretary. If the subpoena is returnable at hearing, a motion to quash may be filed within five (5) days of service and attendance shall not be required until the presiding officer rules on said motion. If the subpoena is served in connection with prehearing depositions, the procedure to be followed with respect to motions to quash and replies thereto will correspond to the procedures established with respect to motions and replies in § 502.132(c).

(b) The General Counsel shall designate an attorney to represent any Commission staff personnel subpoenaed under this section. The attorney so designated shall not thereafter participate in the Commission's decision-making process concerning any issue in the proceeding.

(c) Rulings of the presiding officer issued under § 502.135(a) shall become final rulings of the Commission unless an appeal is filed within ten (10) days after date of issuance of such rulings or